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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 020728							
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on <u>2009-11-25</u> Signature <u><i>R P Ippolito</i></u> Typed or printed Roxanne Ippolito name _____		<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="padding: 5px;">Application Number 10/626,048</td> <td style="padding: 5px;">Filed 2003-07-23</td> </tr> <tr> <td colspan="2" style="padding: 5px;">First Named Inventor Ben Saidi et al.</td> </tr> <tr> <td style="padding: 5px;">Art Unit 2451</td> <td style="padding: 5px;">Examiner Saket K. Daftuar</td> </tr> </table>		Application Number 10/626,048	Filed 2003-07-23	First Named Inventor Ben Saidi et al.		Art Unit 2451	Examiner Saket K. Daftuar
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<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <input type="checkbox"/> applicant/inventor. <input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96) <input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>37,648</u> </div> <div style="width: 45%; text-align: center;">  _____ Signature Raphael Freiwirth _____ Typed or printed name 858-651-0777 _____ Telephone number 2009-11-25 _____ Date </div> </div> <div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div style="width: 45%;"> <input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____ </div> <div style="width: 45%;"></div> </div>									
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.									
<input type="checkbox"/> *Total of _____ forms are submitted.									

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appellant(s): Ben SAIDI and Mark LINDNER	Conf. No.: 1441
Application No.: 10/626,048	Art Unit: 2451
Filed: July 23, 2003	Examiner: DAFTUAR, SAKET K
Title: METHOD AND APPARATUS FOR SUPPRESSING SILENCE IN MEDIA COMMUNICATIONS	

SUPPORT FOR PRE-APPEAL BRIEF REQUEST FOR REVIEW

Dear Sir:

Further to the concurrent filing of the attached Notice of Appeal, and responsive to the final Office Action issued on October 1, 2009, the following remarks are submitted in connection with the above-identified patent application under the Pre-Appeal Brief Review pilot program. Claims 1-25, 27, 29, 31 and 33-36 are pending in the present application. Claims 1, 7, 13 and 19 are independent claims.

MATERIAL UNDER REVIEW

I. Regarding the Examiner's objection to the Specification for disclosing media frames but having insufficient antecedent basis for media "streams".

The claim language of "evaluating the stream of media to identify the one or more silence frames" is objected to for allegedly lacking antecedent basis from the Specification pursuant to 37 CFR. 1.75(d)(1) and MPEP 608.01(o).

In the Amendment of 6/5/2009, the Appellant explained in detail how the Specification supports the claim language of "evaluating the stream of media to identify the one or more silence frames" because embodiments in the Specification describe selectively suppressing silence frames or not suppressing silence frames, for example, based on how many successive silence frames are present (e.g., see at least [0041] and [0047] of the Specification).

The Examiner appeared to accept the Appellant's position as articulated above, but the Specification objection was maintained in the 10/1/2009 Final Office Action because "the instant application specification only directed to media frames not media streams" and the Appellant's clarification "merely evaluates the silence frames rather than evaluating media stream(s)" (e.g., see Page 6 of the 10/1/2009 Final Office Action, Emphasis is Examiner's).

Independent claim 1, for example, recites “receiving a stream of media from the first communication device, wherein said stream of media comprises of one or more silence frames” and “evaluating the stream of media to identify the one or more silence frames”. A stream of media in the context of the claims corresponds to any sequence of two or more frames, as is known in the art, with the claim further requiring that the stream of media have at least one silence frame. Accordingly, when a frame in a particular media stream is evaluated such that the silence frame(s) are detected, it follows that the stream of media itself has been evaluated. In other words, by demonstrating how the individual frames are evaluated as either silence frames or non-silence frames, Appellant has shown how the claim language of “evaluating the stream of media to identify the one or more silence frames” is supported.

For further support, FIG. 6 of the Specification illustrates an example whereby “two silence frames following a media frame and two silence frames preceding a subsequent media frame are transmitted”, and any other silence frames are suppressed or not transmitted (e.g., see [0042] of the Specification). To implement such an operation, it will be appreciated that the media stream 602 of FIG. 6, which contains both media and silence frames, has to be evaluated to figure out which frames are silence frames and which frames are media frames and further to figure out which silence frames are to be dropped in accordance with the above-noted rule. Thus, the individual frames are evaluated as silence or non-silence frames, and then the relationships of the silence frames to the media frames within the stream are evaluated to determine whether a particular silence frame is to be dropped (i.e., in the example of FIG. 6, this means that if the silence frames is within two frames of a media frame then do not drop the silence frame; if not, drop the silence frame).

Appellant respectfully requests that the Pre-Appeal Brief Conference recommend a withdrawal of this rejection because the claim language of “evaluating the stream of media to identify the one or more silence frames” is supported by the Specification.

II. Regarding the Examiner’s rejection of the claims under 35 U.S.C. §102(e) based on Yao, dropping frames at a fixed rate in poor channel conditions as taught by Yao (i) is not based on a determination that the dropped frames are, in fact, silence frames and (ii) cannot guarantee that any dropped frames are actually silence frames.

Independent claim 1 recites in part “evaluating the stream of media to identify the one or more silence frames” and “automatically suppressing the one or more identified silence frames from the received stream of media”. This limitation is similarly recited in independent claims 7, 13 and

19. Silence frames correspond to frames (e.g., in an audio or voice communication) that do not actually include information or data (e.g., see [0002] of the Specification). As will now be explained, the manner in which Yao drops frames is not consistent with a reasonable interpretation of the above-noted claim limitations.

1. Discussion of Yao.

Yao is directed to a method and apparatus for voice latency reduction in a voice-over-data wireless communication system (e.g., see Yao, Title and Abstract). With respect to Figure 8 of Yao, Yao teaches (i) analyzing communication system latency (802), (ii) determining whether the latency, as indicated by a frame error rate (FER), is above a threshold (804), and (iii) dropping frames at different fixed rates (806, 808) based on the determination from (ii) (e.g., See Yao at Figure 8, steps 802-808, and also Col. 19, line 49 – Col. 20, line 41).

In Yao, a latency (which can be inferred from the FER) is compared with the threshold to determine a rate at which to drop packets. Packets are then dropped in a “blind” fashion, at the selected rate (e.g., See Yao at Col. 10, line 67 to Col. 11, line 11, and also Col. 19, line 49 – Col. 20, line 41). Communication system latency may be incidentally related to the rate or probability of frames being “silent”, or not including data. However, the threshold used in step 804 of Figure 8 is not established to identify particular silence frames or to ensure that dropped frames are silent frames, but is rather selected as part of a probabilistic packet dropping process based on an associated latency (which is based on the error rate) (e.g., see Yao at Col. 8, line 62 to Col. 9, line 3). Thus, Yao simply relies on the assumption that “more” low rate frames (which are not necessarily “silence” frames, e.g., see Yao at Column 8, line 62 to Column 9, line 3) will be dropped when the latency (or FER) is above the threshold than when the latency (or FER) is below the threshold.

Any dropped frames, irrespective of whether the rate is lower (e.g., 806 of Figure 8) or higher (e.g., 808 of Figure 8), are based solely on a probabilistic value associated with the selected rate. Thus, if the drop rate is 1 out of every 100 packets, the system of Yao counts up to 100, drops a packet, counts up to 100 again, drops another packet, and so on (e.g., See example provided by Yao at Col. 10, line 66 to Col. 11, line 11). This has nothing to do with whether a particular dropped packet is a silence packet, but merely whether the packets, in general, are expected to include more or less low rate frames, as indicated by the communication channel latency inferred from the FER. It will be appreciated that this process could drop a media frame that includes data as readily as a low rate frame that includes less data. It is also possible that each dropped frame could be a non-silence

frame, again, because frame-dropping in Yao is based on a fixed, rate-dropping schedule, and not a characteristic of any particular frame (i.e., whether the frame is a silence frame).

2. Distinctions of the claims over Yao.

Because Yao teaches dropping frames at a fixed frame-interval when the latency (or FER) rises above a threshold, Yao does not disclose “evaluating the stream of media to identify the one or more silence frames” and then “automatically suppressing the one or more identified silence frames from the received stream of media” as recited in independent claim 1 and similarly recited in independent claims 7, 13 and 19. . Yao simply operates in a different manner, whereby frames are dropped at a fixed interval when the communication channel latency rises above a threshold. Accordingly, the frames that are dropped in Yao could be silence frames or media frames.

In the 10/1/2009 Final Office Action, the Examiner indicates the Appellant’s position that Yao does not drop ‘silence’ frames at a predetermined rate but rather simply discloses dropping frames at a predetermined rate which may be silence frames or data frames is not persuasive because (i) “[t]he person skilled in the art would recognize improving channel quality and latency would be possible with/by determining number of silence frames” and (ii) “Yao clearly discloses that dropping silence frame at rate of 1 frame dropped per hundred frames” (e.g., see Page 3 of the 10/1/2009 Final Office Action). However, (i) appears to admit that Yao does not actually disclose the “evaluating” step, and (ii) is a clear mischaracterization of Yao because Yao does not disclose that the dropped frame is actually a silence frame. Indeed, such an evaluation would be pointless because Yao drops frames in a fixed, predetermined manner, and does not ‘single out’ silence frames to drop selectively.

Also in the 10/1/2009 Final Office Action, the Examiner indicates the Appellant’s position that Yao does not disclose that the dropped frame is actually a silence frame is not persuasive because Yao defines silence frames (e.g., see bottom of Page 3 and top of Page 4 of the 10/1/2009 Final Office Action). However, Yao’s mere acknowledgment that silence frames exist is insufficient to show that the frames being dropped at a fixed, predetermined interval are silence frames.

Also in the 10/1/2009 Final Office Action, the Examiner discusses that Yao is evidence with regard “why the person skilled in the art would drop frames and such dropping would lead to improve the latency in packet transferring” (e.g., see Page 4 of the 10/1/2009 Final Office Action). In a proper 35 U.S.C. § 102 rejection, a single reference must be asserted, with additional references or teachings only being relevant to show an inherent feature that is not explicitly set forth in the single reference. However, nowhere in Yao does Yao actually disclose determining the number of

silence frames, or even determining any particular silence frame. Thus, this assertion regarding the alleged recognition of one of ordinary skill in the art appears to be based on obviousness (i.e., on what one of ordinary skill in the art would recognize, not upon what is actually disclosed in Yao) rejection cannot satisfy the requirements of 35 U.S.C. § 102 and must be withdrawn. As discussed in the Amendment of 3/5/2009, Appellant further submits that the Examiner's rationale is incorrect even when considered under a 35 U.S.C. § 103 framework.

In view of above remarks, Appellant respectfully requests that the Pre-Appeal Brief Conference recommend a withdrawal of this rejection.

Conclusion

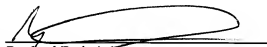
In light of the remarks contained herein, Appellant respectfully submits that the application is in condition for allowance, for which early action is requested.

Please charge any fees or overpayments that may be due with this response to Deposit Account No. 17-0026.

Respectfully submitted,

Dated: November 25, 2009

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